

PUBLIC WORKS AND UTILITIES COMMITTEE

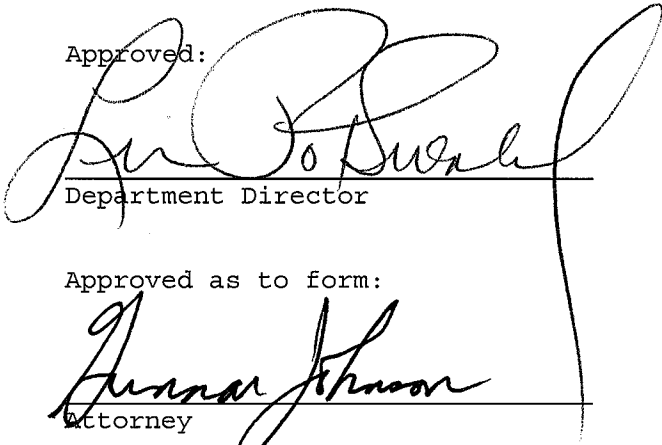
11-0568R

RESOLUTION AUTHORIZING A LICENSE AGREEMENT WITH THE
DULUTH ECONOMIC DEVELOPMENT AUTHORITY (DEDA) TO DISPOSE
OF SNOW ON PROPERTY OWNED BY DEDA.

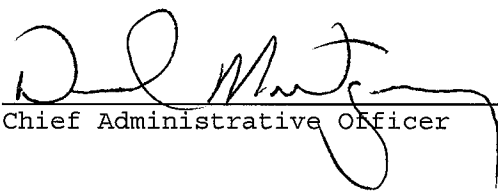
CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute a license agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with the Duluth economic development authority (DEDA), to allow the city to dispose of snow from street plowing operations on certain DEDA-owned property known as DEDA lot D located west of bayfront park.

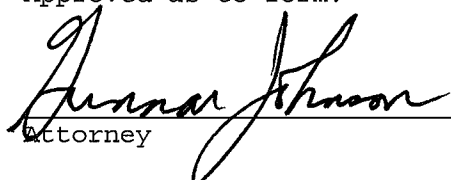
Approved:


Department Director


Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

DEDA JC:bel 10/21/2011

STATEMENT OF PURPOSE: This resolution authorizes the city to execute a license agreement with DEDA allowing the city to dispose of snow from its street plowing operations on DEDA property known as DEDA Lot D located west of Bayfront Park.

LICENSE AGREEMENT

THIS AGREEMENT is made by and between the Duluth Economic Development Authority (DEDA) and the City of Duluth (CITY).

LICENSE AND TERM

DEDA hereby grants to City a non-exclusive license upon the terms and provisions stated herein, and revocable at any time with or without cause in the sole discretion of DEDA to enter onto certain property on DEDA "Lot D" as shown on Exhibit "A" attached hereto (the Licensed Premises). The term of this license will commence on October 26, 2011, or upon DEDA's receipt of a technical assistance letter from the Minnesota Pollution Control Agency (MPCA), whichever is later, and shall continue until May 1, 2012, unless earlier terminated, for the sole purpose of dumping snow removed from City public streets.

COMPLIANCE WITH LAWS, PROTECTION OF OTHER PROPERTIES

During the term of this Agreement, City, its officers, agents, employees and invitees shall fully comply with all applicable laws. Neither City, its officers, agents, employees, or invitees, nor anyone accompanying City, its officers, agents, employees, or invitees shall deposit solid waste or liquid waste on or commit waste on or damage to the Licensed Premises or allow any public or private nuisance or other act or thing to take place, other than snow dumping on the Licensed Premises.

INDEMNIFICATION

As lawful consideration for using the Licensed Premises, City agrees to defend, indemnify, and hold harmless DEDA and its officers, agents, servants and employees from and against any and all losses, liens, claims, actions, demands, liabilities, judgments, penalties, injunctive relief, injury to person(s) or damage to the Licensed Premises, costs, damages and expenses by reason of any actual or alleged act or omission of City or its employees, members, agents, volunteers or invitees in connection with or relating to City's use or occupancy of the Licensed Premises including spills, leaks and cross-contamination. Upon ten (10) days' written notice, City shall appear and defend all claims and lawsuits against DEDA growing out of any such injuries or damages. DEDA does not waive its immunities under state or federal law.

ASSIGNMENT AND SUBLICENSING

The rights and obligations of City hereunder may not be assigned, subleased, sublicensed or in any other way transferred.

INSURANCE REQUIREMENTS

During the term of this license, City, at its own cost and expense, shall self insure comprehensive liability and property damage insurance applicable to the Licensed Premises, and City agents, employees, servants, invitees or licensees, sufficient to protect the interests of DEDA with a combined single limit of at least \$1,500,000; for each occurrence \$500,000; and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. DEDA shall be considered an additional insured.

USE AND MAINTENANCE

City agrees to comply with or perform reasonable requirements, conditions, or suggestions set forth in the MPCA Technical Assistance Letter prior to dumping any snow on the Licensed Premises. Additionally, City agrees to exercise care in the use and maintenance of the Licensed Premises during the term of this License Agreement. City agrees to pay for or repair upon demand any damage done to the Licensed Premises during the term of this License, including but not limited to damage to fencing.

TERMINATION

DEDA may, in its sole discretion, revoke this license at any time and for any reason after giving of ten (10) days' written notice to City as indicated in NOTICES.

ENTRY TO AND CLEANING OF LICENSED PREMISES

In the event that DEDA determines that oil or other fluids have leaked from the equipment, or if other debris or waste, including salt, is left on the Licensed Premises and an agency having proper jurisdiction requires clean up action, City shall properly perform and leave the Licensed Premises in a condition complying with the agency's requirements. In the event that City fails to clean-up the Licensed Premises, DEDA may cause such clean-up and City shall be responsible for all costs of clean-up.

City agrees that on or after May 1, 2012, and with a minimum of seven (7) days advance notification by DEDA (written or electronic), City will take those steps necessary to either remove any remaining snow from the Licensed Premises or otherwise take those steps necessary to accelerate the melt of said remaining snow earlier deposited onto the Licensed Premises by City.

In addition to any agency requirement for clean-up as set forth above, following the occurrence of the melting of snow, whether it be before, on or after May 1, 2012, City shall remove all garbage and debris of whatever nature from the Licensed Premises. In the event that City fails to remove said garbage and debris, DEDA cause such removal and City shall be responsible for all said removal costs.

CONSENTS

City shall contact and obtain consent of any regulatory agency having proper jurisdiction if such consent is required.

NOTICES

Notices hereunder shall be deemed sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses set forth below or to such other respective persons or addresses as the parties may designate to each other in writing from time to time. Notice by mail shall be effective three (3) days after mailing. In the event of an emergency, DEDA may give oral notice which shall be effective immediately.

If to DEDA: Executive Director
Duluth Economic Development Authority
411 West First Street
402 City Hall
Duluth, MN 55802

If to City: Chief Administrative Officer
City of Duluth
411 West First Street
402 City Hall
Duluth, MN 55802

IN WITNESS WHEREOF, DEDA and City have caused this Agreement to be executed by their duly authorized officers as of the date first below written.

DULUTH ECONOMIC DEVELOPMENT
AUTHORITY

CITY OF DULUTH

President

Mayor

Date

Date

Secretary

Attest:

Date

City Clerk

Date

Countersigned:

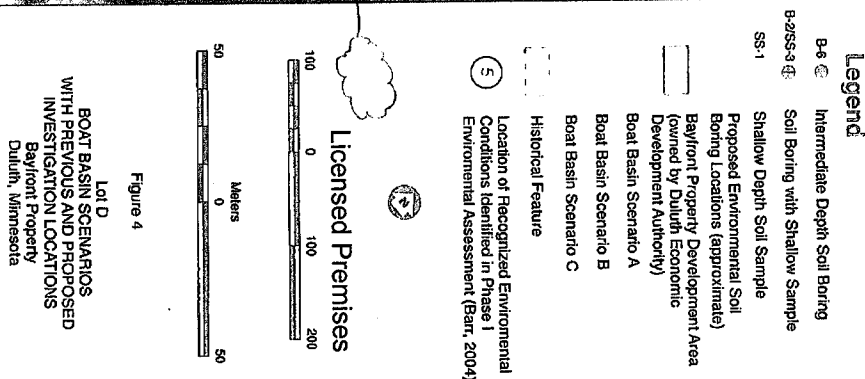
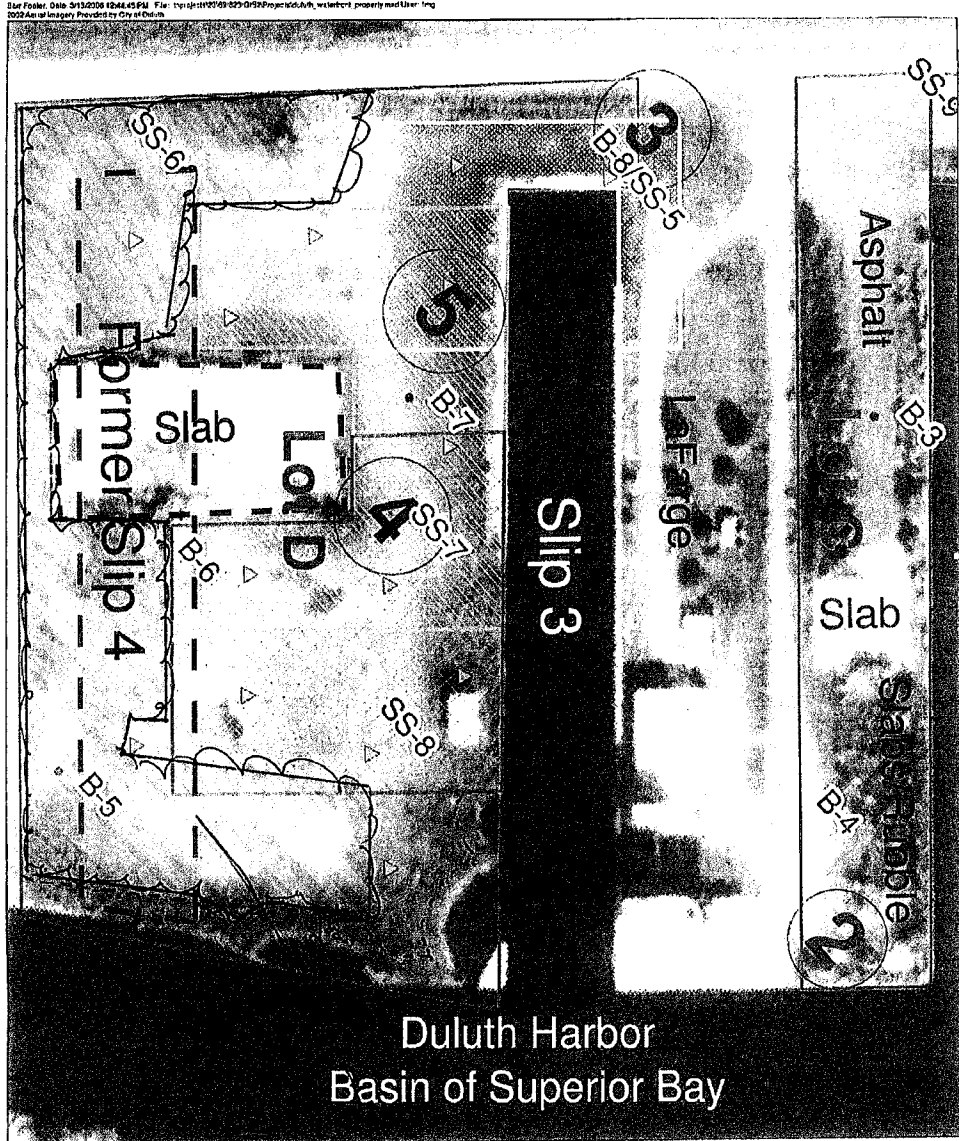
City Auditor

Approved as to Form:

City Attorney

Exhibit A

SITE MAP BAYFRONT PARCEL D MPCA PROJECT NUMBER VP25810





Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

800-657-3864 | 651-282-5332 TTY | www.pca.state.mn.us | Equal Opportunity Employer

October 19, 2011

Ms. Heidi Timm-Bijold
Duluth Economic Development Authority
402 City Hall
Duluth, Minnesota 55802

RE: Bayfront Parcel D, 500 to 1000 Railroad Street, Duluth
MPCA Project Number VP25810
Technical Assistance Letter

Dear Ms. Timm-Bijold:

The Minnesota Pollution Control Agency (MPCA) staff in the Voluntary Investigation and Cleanup (VIC) program has reviewed your October 11, 2011 e-mail, which requests MPCA concurrence that areas of the Bayfront Parcel D property (the Site), may be utilized by the City of Duluth for temporary snow storage during the 2011/2012 winter season. This letter is to provide technical assistance regarding the proposed snow storage plan.

The approximately 10-acre Site is located in the City of Duluth on the shoreline of the St. Louis River, between Park Point and Rice's Point and is situated along the base and southwest of Slip 3, is bounded by Railroad Street on the northwest and extends just southwest of former Slip 4. The property is currently zoned industrial and is owned by the DEDA with potential plans for development into a vessel dockage facility and possibly other water access related uses.

The proposed Site activity includes the possible placement of excess city-removed snow within the areas indicated on the Site map as Attachment B. The snow storage will only be used on an "as-needed" basis and would potentially occupy those identified areas of the Site from approximately the first snowfall of the winter until the snow melts in the spring of 2012. The proposed activity has been reviewed by MPCA VIC Program staff and, if followed as described below, should have negligible impact or contribution to potential identified releases at the Site. The following are MPCA VIC Program staff comments to the Plan:

- The snow shall only be placed within the areas identified on the Figure as Attachment B, no snow shall be pushed into the St. Louis River; and
- Without delay, upon the final spring melting of the snow pile, accumulated trash and debris shall be physically removed from the Site for proper disposal.

Please be advised that this letter is subject to the disclaimers in Attachment A. If you have any comments, questions or concerns regarding this correspondence, please call the technical analyst, Shanna Schmitt at 651-757-2697 or me at 651-757-2857.

Sincerely,

A handwritten signature in black ink, appearing to read "David Knight".

David Knight
Project Leader
VIC and Emergency Response Section
Remediation Division
DK:SS:jmp

Attachments

ATTACHMENT A
DISCLAIMERS
BAYFRONT PARCEL D SITE
MPCA PROJECT NUMBER VP25810

1. Reservation of Authorities

The MPCA Commissioner reserves the authority to take any appropriate actions with respect to any release, threatened release, or other conditions at the Site. The MPCA Commissioner also reserves the authority to take such actions if the voluntary party does not proceed in the manner described in this letter or if actions taken or omitted by the voluntary party with respect to the Site contribute to any release or threatened release, or creates an imminent and substantial danger to public health and welfare.

2. No MPCA Assumption of Liability

The MPCA, its Commissioner and staff do not assume any liability for any release, threatened release or other conditions at the Site or for any actions taken or omitted by the voluntary party with regard to the release, threatened release, or other conditions at the Site, whether the actions taken or omitted are in accordance with this letter or otherwise.

3. Letter Based on Current Information

All statements, conclusions and representations in this letter are based upon information known to the MPCA Commissioner and staff at the time this letter was issued. The MPCA Commissioner and staff reserve the authority to modify or rescind any such statement, conclusion or representation and to take any appropriate action under his authority if the MPCA Commissioner or staff acquires information after issuance of this letter that provides a basis for such modification or action.

4. Disclaimer Regarding Use or Development of the Property

The MPCA, its Commissioner and staff do not warrant that the Site is suitable or appropriate for any particular use.

5. Disclaimer Regarding Investigative or Response Action at the Property

Nothing in this letter is intended to authorize any response action under Minn. Stat. § 115B.17, subd. 12.

ATTACHMENT B
SITE MAP
BAYFRONT PARCEL D
MPCA PROJECT NUMBER VP25810

